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In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

Cases of more than usual interest digested in this issue include the following:

A Federal court in Maine has ruled that pledged shares of a Maine corporation are not subject to attachment. (See page 33.) The Chancellor of Delaware has concluded that where there was an alleged oral agreement between stockholders to preserve voting rights incident to a particular class of stock, the remedy of injunction is not available to prevent the filing of an amendment which would eliminate that class of stock. (Page 30.) In Illinois, a subscriber to stock was held not to be released from liability merely because another person had paid the amount subscribed, which amount had later been refunded by the corporation. (Page 31.) In California and New York decisions, the regular and systematic solicitation of orders within the respective state was held to give rise to service of process upon the soliciting corporations. (Pages 35 and 38.)

Raymond Kenway

President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for November

Foreign Corporations

Suits Involving Their Internal Affairs

In a number of decisions in the past few years, courts have refused to assume jurisdiction over suits involving the internal affairs of foreign corporations.

For instance, in *Garfield et al. v. The Great Northern Railway Co. et al.*,[1] the United States District Court, Eastern District of New York, suggested that stockholders of a Minnesota corporation resort first to the courts of the corporation's domicile in seeking to restrain the company and its officers and directors from holding a proposed meeting and to enjoin the amendment of its charter and the revision of the corporate structure. The Supreme Court of Pennsylvania ruled in *Kelly v. Brackenridge Brewing Co., Inc., et al.*,[2] that "the fact that the corporate defendant's principal place of business and its visible tangible property are within our borders is immaterial," when dismissing a stockholder's bill in equity against a foreign corporation to review transactions with the corporation's predecessor, whose obligations the foreign corporation had assumed. In *Fox v. Allied Stores Corporation*,[3] the New York Supreme Court, Appellate Division, First Department, refused to assume jurisdiction where a stockholder of a Delaware corporation sought, in the New York Courts, to compel the company to pay unpaid accumulated dividends on stock which she had surrendered for exchange under a plan of recapitalization. In *Kaletay v. National Register Publishing Co., Inc., et al.*,[4] the New York Supreme Court indicated that it would deny to the director of a foreign corporation the right to inspect the books and records of his corporation where his purpose was to satisfy himself that the business of the corporation was properly managed, so that he might properly perform his duties as a director.

The general rules applicable to such situations were succinctly stated by the Supreme Court of the United States in *Rogers v. Guaranty Trust Company of New York et al.*,[5] in an action taken to it from the United States Circuit Court of Appeals, Second Circuit, in which a stockholder of a New Jersey company sought in New York to review a plan involving a change in the corporate structure and to enjoin its consummation:

> "It has long been settled doctrine that a court—state or federal—sitting in one State will as a general rule decline to interfere with or control by injunction or otherwise the management of the internal affairs of a corporation organized under the laws of another State but will leave controversies as to such matters to the courts of the State of the domicile."
>
> "Obviously no definite rule of general application can be formulated by which it may be determined under what circumstances a court will assume jurisdiction of stockholders' suits relating to the conduct of internal affairs of foreign corporations. But it safely may be said that jurisdiction will be declined whenever considerations of convenience, efficiency and justice point to the courts of the State of the domicile as appropriate tribunals for the determination of the particular case."

An instance where jurisdiction would be assumed was had in *Lydia E. Pinkham Medicine Co. v. Gove et al.*,[6] where, although the company was incorporated in Maine, suit was entertained by the Supreme Judicial Court of Massachusetts upon a showing that the principal place of business of the corporation was in Massachusetts and all the defendants were alleged to reside there. "It is reasonably inferable from the bill," said the court, "that the acts complained of were performed in this Commonwealth and that the evidence, both documentary and oral, relating to them would be more readily available here than elsewhere."

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[1] Commerce Clearing House Court Decisions Requisition No. 149709, decided December 20, 1935. (The Corporation Journal, April, 1936, page 154.) [2] 178 Atl. 487. (The Corporation Journal, October, 1935, page 16.) [3] 300 N. Y. S. 1254. (The Corporation Journal, March, 1938, page 129.) [4] 13 N. Y. S. 2d 48. (The Corporation Journal, November, 1939, page 38.) [5] 288 U. S. 123. (The Corporation Journal, March, 1933, page 337, 343.) [6] 9 N. E. 2d 573; 20 N. E. 2d 482. (The Corporation Journal, November, 1937, page 39 and June, 1939, page 418.)

Domestic Corporations

Delaware.

Where there was an alleged oral agreement between stockholders to preserve voting rights incident to a particular class of stock, the remedy of injunction is held not available to prevent the filing of an amendment which would eliminate that class of stock. Agreement granting voting rights ruled not to be a voting trust where subject to be terminated upon owner's demand for a proxy or upon surrender of stock. Complainant sought an injunction to restrain the filing of an amendment to defendant company's charter. He alleged the existence of an oral agreement between stockholders of defendant company, to which complainant's assignor had been a party, relating to Class A stock now held by complainant. Under the proposed amendment, this stock, possessing certain special voting rights, was to be eliminated, whereas under the alleged agreement between the former owners of all the outstanding Class A stock, such special rights incident to this stock were not to be taken away by any subsequent charter amendment. The Chancellor reached the conclusion that the alleged agreement "was a mere collateral oral agreement, not appearing in the charter of the corporation, and, therefore, not binding on it, or its stockholders." The court indicated that if complainant had any contract rights, "he should be remitted to his action at law and the drastic remedy by injunction should not be invoked."

Involved in connection with the voting on the amendment were certain shares which were the subject of an agreement between the defendant issuing company and another corporation which voted them. Complainant termed the agreement a permanent voting trust which was illegal because it was for a period in excess of the ten-year statutory period. Upon examination, the court concluded that the agreement could not be regarded as a voting trust, finding it was merely an agreement giving the voting corporation irrevocable voting rights for a specified period, the length of which was determined at the pleasure of the real owner of the stock upon the surrender of his certificate of stock in the voting company or upon demand for a blank proxy. *Aldridge v. Franco Wyoming Oil Co.*, 7 A. 2d 753. Daniel O. Hastings and Ayres J. Stockly of Hastings, Stockly, Duffy and Layton, of Wilmington, for complainant. Clarence A. Southerland and E. Ennalls Berl of Ward & Gray of Wilmington, (Alexander B. Siegel, of New York City, of counsel), for defendants. Commerce Clearing House Court Decisions Requisition No. 220466.

Florida.

In suit to enforce inspection of corporate books and records where sharp business rivalry existed between the parties, court permits inspection to be made by a person neutral and disinterested. The parties were owners and publishers of rival newspapers and one, the relator, had acquired forty per cent of the stock of respondent. The relator was refused permission to examine all of respondent's books,

accounts and other records and brought this proceeding to conduct such an examination. The Supreme Court of Florida said: "It is admitted by both parties hereto that no statutory authority clothes Relator with the right to examine all the books of account and records of the Respondent corporation but that such right as he has to do this is that which emanated from the common law. Under the common law, it is well settled that such a right was not absolute but was limited and qualified. It was said by some authorities to be a privilege rather than a right. In any event, it must be sought in good faith and for a lawful purpose. The one seeking it must show that his right as a stockholder will be seriously affected if the inspection is not permitted. In granting such a privilege, the interest of the one seeking it must actuate the grant but even then it will not be granted to the detriment of the corporation; neither will it be permitted for a fishing expedition or to satisfy idle curiosity. The inspection must have some direct relation to seeker's interest as a stockholder and must be for a just and reasonable purpose." "The pleadings in this case disclose sharp rivalry and animus between the parties hereto. When this is the case, motives for seeking such information should be more rigidly construed. As a stockholder in the corporation, Relator is entitled to all information affecting the value of his stock which is determined by the financial status of Respondents. We think, however, that in view of the relation between the parties, the peremptory writ should be amended to require that such audit and investigation as is necessary to determine this should be made by some one neutral and disinterested between the parties." *News-Journal Corporation et al. v. State ex rel. Gore,* 187 So. 271. Commerce Clearing House Court Decisions Requisition No. 213686. Green & West of Daytona Beach, for plaintiffs in error. D. C. Hull and Hull, Landis & Whitehair of De Land, and McCune, Hiaasen & Fleming of Fort Lauderdale, for defendant in error.

Illinois.

Subscriber to stock held not released from liability by reason of payment by another of amount subscribed; suit may be brought on original subscription without the necessity of a demand for payment by the corporation. Appellant's testator had subscribed for forty shares of the stock of appellee company, for which no payment was subsequently made by him. In order to enable the corporation to have the required funds to commence operations, another stockholder advanced the amount due. Later the corporation refunded the amount advanced by the other stockholder, held the certificate ready for delivery to appellant's testator, and, failing to receive his payment, brought this action to recover. The Illinois Appellate Court, Second District, affirmed a judgment for the corporation, ruling that the payment of the full amount of the subscribed capital stock by someone other than the testator did not release him from liability upon his subscription for stock. As to whether a demand was required to be made upon the subscriber before suit on such an

original subscription could be brought, the court indicated that no demand was necessary. *Peoria Investment Corporation v. Hoagland, Executrix,* 20 N. E. 2d 627. Commerce Clearing House Court Decisions Requisition No. 214827. Chester F. Barnett and E. E. Horton of Peoria, for appellant. Eagleton & Eagleton of Peoria, for appellee.

Recovery denied to trustee in bankruptcy of corporation whose stock defendant had agreed to purchase. As trustee in bankruptcy of a corporation, plaintiff brought this action on a subscription warrant whereby defendant had subscribed for shares of stock of the corporation, agreeing to make payments in ten instalments, of which three had been paid. The resolution of the board of directors covering the issuance of the warrants provided that upon making payment of the whole or one or more instalments, the subscriber would be entitled to receive a stock subscription receipt upon which payments of the instalments were to be endorsed as made, and upon the date of the final payment the subscriber was entitled to have issued to him a certificate of stock for the number of shares. It was specifically provided that "ownership of a stock subscription receipt shall not constitute the owner a stockholder in the company." The Illinois Appellate Court, First District, concluded that the agreement or document signed by the defendant was not a subscription but was rather an executory contract for the sale and purchase of stock and that the bankruptcy of the corporation rendered it unable to perform its part of the contract and issue the stock certificate. A dismissal of the suit by the lower court was affirmed. *Bigelow, Trustee in Bankruptcy of Insull Utility Investments, Inc. v. Bicek,* 18 N. E. 2d 399. Commerce Clearing House Court Decisions Requisition No. 209700.

Indiana.

Manner in which a promoters' contract may be adopted by corporation outlined by Supreme Court of Indiana. In a suit brought by the appellees to recover a commission for services rendered in the reorganization and refinancing of a corporation, resulting in the organization of appellant company, the Supreme Court of Indiana outlined the circumstances which would bring about a ratification of a promoters' contract as follows: "Manifestly no formal resolution of a board of directors is required to effect a ratification; yet something more is demanded than a mere acceptance of benefits which the corporation has no power to reject without uncreating itself. We believe the rule applicable may be more clearly stated as follows: A corporation may, in the absence of charter or statutory provisions to the contrary, make a promoters' contract its own in the same manner that it might itself enter into a contract of a similar nature as one of the original contracting parties. No more particular formality is required in the former case than is to be observed in the latter. This presupposes that there may be an implied ratification under some situations." *Indianapolis Blue Print & Mfg. Co. v. Kennedy et al.,* 19 N. E. 2d 554. Matson, Ross, McCord & Clifford of Indianapolis, for appellant. Claycombe & Stump, for appellees.

Maine.

Federal court rules that pledged shares of a Maine corporation are not subject to attachment. In *Pennsylvania Co. for Insurance on Lives and Granting Annuities v. United Railways of Havana & Regla Warehouses, Limited,* 26 F. Supp. 379, the United States District Court, D. Maine, S. D., had before it the question whether hypothecated shares of stock in a Maine corporation were attachable under the laws of Maine, the court observing that "so far as the reported cases show this question has never been decided." The court pointed out that "in the absence of a statute no shares of stock in a corporation are attachable," and that "an equity of redemption in any kind of personalty not being attachable at common law, it follows that statutory authority must be found for such an attachment, to have it valid. It was never the law that a statute giving the right to attach property carried the right to redeem it from a mortgage or pledge. They are two different things." After an examination of the Maine statutes permitting the attachment of "personal property," in none of which shares of stock were mentioned specifically, the court regarded the language as limiting the application of the sections to the attachment of tangible personalty, and said: "I am driven to the conclusion that there has been no statute passed in Maine permitting the attachment of hypothecated shares in a Maine corporation, and that such an attempted attachment would be of no effect." Finding shares which had been attached to have been subjected to valid, specific pledges and charges prior to the date of the attachment, the court ordered the attachment before it quashed. Verrill, Hale, Dana & Walker of Portland, Me., Saul, Ewing, Remick & Saul of Philadelphia, Pa., and Wright, Gordon, Zachry & Parlin of New York City, for plaintiff. Cook, Hutchinson, Pierce & Connell of Portland, Me., and Louis B. Wehle of New York City, specially for defendant. McLean, Fogg & Southard of Augusta, Me., for intervenors. Merrill & Merrill of Skowhegan, Me., specially for the motion.

New Jersey.

Sole non-assenting stockholder, delaying for two years after merger before instituting suit, ruled not entitled to relief where lower court had found consolidation agreement was fair and equitable as to the stockholder. Appellant was a holder of shares of 7% non-cumulative preferred stock of a New Jersey corporation. Subsequently, another company was merged into appellant's company, upon the approval of all stockholders except appellant, and the stockholders of this company were offered two alternatives. One was to receive 2¾ shares of the common stock of the consolidated corporation for each share of 7% non-cumulative preferred held and the other was to receive one share of the $7 cumulative preferred stock of the consolidated corporation for each share of the 7% non-cumulative preferred held and in addition to receive a sum equal to the amounts

of any deferred or unpaid dividends to which such stockholders might be held entitled upon the final adjudication of such issue in a court of record. The appellant did not exercise either option and did not seek appraisal of her stock under the statutory provisions granting such an appraisal. Two years after the merger or consolidation, she instituted this action to have the merger or consolidation declared void as to her and for an accounting and other relief. Appellant's stock carried no accrued dividends. The United States Circuit Court of Appeals, Third Circuit, affirmed a decree of the court below which dismissed the bill of complaint for want of equity, basing its judgment not only upon the fact that the appellant had been guilty of laches, but also upon the finding of the lower court, both as a fact and a conclusion of law, that the provisions of the consolidation agreement were fair and equitable to the appellant. *Clarke v. Gold Dust Corporation,* United States Circuit Court of Appeals, Third Circuit, August 10, 1939. Commerce Clearing House Court Decisions Requisition No. 221391.

Ohio.

Owner of preferred stock, not surrendered under a recapitalization plan, upon which there were unpaid cumulative dividends, held entitled to injunction against further payment of dividends on common stock until his cumulative dividends up to time of reorganization were paid. Plaintiff was the owner of 120 shares of the 7% preferred stock of the defendant company, upon which cumulative dividends remained unpaid at the time this action was brought to enjoin the payment of dividends upon the corporation's common stock so long as dividends upon plaintiff's stock had not been fully paid. The charter of defendant company had been amended so as to provide for the exchange of the 7% preferred stock for the same number of new 5% preferred shares plus a cash dividend on the 5% preferred. In addition, one share of new common was to be issued for each share of the old preferred in full payment of the cumulative dividends due. Plaintiff did not surrender his shares, nor did he make a demand under Sec. 8623-72 for the value of his stock, including accrued dividends, in cash. The Court of Appeals of Ohio, Montgomery County, finding no statutory provision existed for the treatment of undeclared cumulative dividends remarked: "In New Jersey and Delaware it has been directly held that a stockholder has a vested interest in cumulative dividends, and that the same may not be taken away from him through alteration or amendment. We have difficulty in following the designation 'has a vested interest.' However, by whatever name known, it is an existing, substantial right, and has a prospective value." "Being of the opinion that no sections of the Corporation Act provide for cumulative undeclared dividends, we hold that the attempted action was illegal, and therefore the remedies under Section 8623-72, General Code, are not exclusive." "Plaintiff is not entitled to all the relief for which he asks, but since it is a conceded fact that dividends have been paid on common stock

since the reorganization, he is entitled to an injunction against the further payment of dividends on the common stock until such time as his cumulative dividends up to the time of reorganization have been paid. Plaintiff is not entitled to have the order continued so as to cover claimed dividends after the reorganization. Under this situation plaintiff would not be entitled to the common stock proposed to be issued in lieu of preferred cumulative dividends. Plaintiff, upon surrender of his stock, will be entitled to a like number of shares of the new five per cent preferred stock. The cause is remanded for further proceedings according to law. Judgment accordingly." *Harbine v. Dayton Malleable Iron Co.*, 22 N. E. 2d 281. John T. Harbine, Jr., of Xenia, for appellant. McMahon, Corwin, Landis & Markham of Dayton, for appellee. *Note: Sec.* 8623 - 14, *as amended by L.* 1939, *S. B.* 47, *effective July* 24, 1939, *permits the amendment of the charter so as to provide for "the discharge, adjustment or elimination of rights to accrued undeclared cumulative dividends" on any class of stock, subject to the rights of dissenting stockholders under provisions for appraisal and payment of the fair cash value of their stock.*

Foreign Corporations

California.

Service upheld where made upon foreign corporation selling extensively in state, at first through plaintiff as its agent and later through wholly owned subsidiaries. Service of process had been made upon defendant foreign corporation by serving the secretary of state as its agent. The corporation sought in this action to have the service set aside on the ground that it had not been "doing business" in California. The District Court, Northern District, California, S. D., denied the motion to quash service, upon evidence which indicated defendant sold its products extensively in California, at first through plaintiff as its distributor, whom the court regarded from the facts as a direct agent under defendant's control rather than as an independent merchant, and later through wholly owned subsidiaries created by the foreign corporation to act in lieu of the plaintiff. *Moore Machinery Co. v. Stewart-Warner Corporation,** 27 F. Supp. 526. Commerce Clearing House Court Decisions Requisition No. 219980. Keyes & Erskine of San Francisco, for plaintiff. Chickering & Gregory of San Francisco, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service**, California, page 309.

Florida.

Mere acceptance of money and certificate for shares of stock in settlement of note in Florida held not "doing business." The Supreme Court of Florida has ruled that the acceptance by an unlicensed foreign corporation, through its attorney in Florida, of a sum of money and a certificate for shares of stock in a Florida corporation, in settlement

To Lawyers, Fe

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of a note made by a citizen of Florida and owned by the foreign corporation, does not violate Section 6026, Compiled General Laws of Florida, 1927, which provides that no foreign corporation "shall transact business or acquire, hold or dispose of property in this State" until it shall have qualified with the Secretary of State. *Crockin v. Boston Store of Ft. Myers, Inc., et al.,** 188 So. 853. Commerce Clearing House Court Decisions Requisition No. 217375. Himes & Himes of Tampa, for appellant. Treadwell & Treadwell and M. A. Rosin of Arcadia, for appellees.

* The full text of this opinion is printed in **The Corporation Tax Service**, Florida volume, page 155.

New York.

Director of foreign corporation, petitioning solely as a director, denied order for inspection of books and records of corporation within state. Where a director of a foreign corporation petitioned solely as a director for an order for the inspection of the books and records of his corporation, his rights as a stockholder not being involved, the New York Supreme Court, Special Term, New York County, denied the application as being one relating to the internal management of the affairs of the foreign corporation. *Kaletay v. National Register Publishing Co., Inc. et al.*, 13 N. Y. S. 2d 48. Frederic E. Hammer of New York City, for petitioner. Turnbull & Bergh of New York City, for respondents.

Maintaining an office in state, from which orders were regularly solicited, held "doing business" for purpose of service of process upon foreign corporation. The Supreme Court, Appellate Division, Fourth Department, has held service of process upon a foreign corporation valid, where it maintained an "Eastern Sales Office" in New York City in its corporate name. Through that office, the company's eastern sales manager, "the managing agent" who had been served on behalf of the company, systematically and regularly solicited and obtained orders, resulting in shipments of the corporation's products into New York State from its manufacturing plant in Wisconsin. "Such a course of business conduct," observed the court, "by which goods are shipped into this state as a direct result of solicitations and business activities conducted in this state by a foreign corporation's agent present here, amounts to doing business within this state in a manner which makes the corporation amenable to the process of our courts." *Schumann v. National Pressure Cooker Co. et al.,** 10 N. Y. S. 2d 743. Commerce Clearing House Court Decisions Requisition No. 216069. A. S. & S. S. Cohen (Asher S. Cohen, of counsel) of Syracuse, for respondent. Bond, Schoeneck & King (Tracy H. Ferguson, of counsel) of Syracuse, for appellant. Frank A. Pfalzer of Buffalo, for appellant.

* The full text of this opinion is printed in **The Corporation Tax Service, New York, page 265.**

Texas.

Service of process upon agent of foreign corporation shipping magazines into state, supervising and promoting their sale and making settlement for those not sold, upheld by Federal Court. The United States District Court, Eastern District of Texas, has ruled that a foreign magazine publishing company which not only shipped its magazines into Texas, but also retained title to them in the state and, through an agent supervised the sale of the magazines, made settlement for unsold copies, promoted sales and secured new dealers from time to time, was to be regarded as doing business in Texas and subject to the jurisdiction. *Clements v. MacFadden Publications, Inc.*,* United States District Court, Eastern District of Texas, May 15, 1939. Commerce Clearing House Court Decisions Requisition No. 216635; 28 F. Supp. 274. Jones & Jones of Marshall, Taylor & Storey of Longview, for plaintiff. Samuels, Foster, Brown & McGee of Fort Worth, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service,** Texas volume, page 515.

Washington.

Home Owners' Loan Corporation held subject to garnishment. In an action in which the question presented for determination was "whether or not the Home Owners' Loan Corporation is subject to garnishment," the Washington Supreme Court has answered this question in the affirmative, saying: "Although the corporation was designed and is owned, controlled, and supported as an instrumentality of the United States, it, nevertheless, has the character and all the attributes of a private domestic corporation." "The Home Owners' Loan act authorized the corporation to sue and be sued in any court of competent jurisdiction, Federal or state. If it can sue upon its contracts, it surely can garnish. If it is engaging in a commercial business, under the protection and privileges afforded by the law of a state, it should be amenable to all the lawful process, including garnishment, afforded by such state against other corporations doing a similar business." The Court's ruling followed similar decisions in Ohio, Nebraska and New York holding that the corporation mentioned is a private corporation subject to garnishment. *McAvoy v. Weber et al.*, Washington Supreme Court, March 24, 1939. Commerce Clearing House Court Decisions Requisition No. 214070.

Taxation

Louisiana.

Treasury shares, not cancelled, received in exchange for surplus, considered "issued and outstanding capital stock" for franchise tax purposes. The Louisiana Supreme Court has held that where a corporation transferred assets representing a portion of its surplus

to the estate of a stockholder in exchange for the surrender of certain shares, and the shares were not cancelled but were treated as "treasury shares," the transaction would not have the legal effect of reducing the capital stock of the corporation for franchise tax purposes. "The reason," said the court, "why 'treasury' shares are considered issued and outstanding capital stock within the meaning of the Franchise Tax Law is, because as long as the corporation owns them, they represent the price, in cash, services or assets paid by the shareholder to the corporation in consideration therefor and the corporation continues to use this capital in the operation of its business after acquiring the 'treasury shares,' because they were paid for out of its surplus." *State of Louisiana v. Stewart Brothers Cotton Co., Inc.,** 190 So. 317. Commerce Clearing House Court Decisions Requisition No. 217276. Charles J. Revet, Sp. Asst. to Atty. General, for the State. Monroe & Lemann and J. Rabun Monroe of New Orleans, for appellant.

* The full text of this opinion is printed in **The Corporation Tax Service, Louisiana, page 1618.**

New Jersey.

Corporation operating in New Jersey as a broker held subject to the foreign corporation franchise tax. The prosecutor company contended it was not subject to the franchise tax imposed upon foreign corporations "for the privilege of exercising their franchises in this state or doing business or maintaining offices in this state." Its sole business transacted in the state was that of broker in the negotiation of contracts of insurance or reinsurance for others. It obtained orders for insurance from New Jersey residents, soliciting them either in New Jersey or New York, if such persons had their business or were employed in the State of New York. All applications for insurance were written into contracts which were executed in New York. The Supreme Court of New Jersey ruled that, under such circumstances, the company was subject to the tax, observing that the corporation was not in the insurance business. "It is a broker only and, regardless of where the contract of insurance between customer and insurer was concluded, it does not affect its status as one doing business in New Jersey. It was not in the business of selling insurance in the strict sense because it did not have insurance to sell. It sold a service to a customer, nothing more." This activity the court regarded as a local business, which subjected the company to the tax. *Gaines, Silvey & Nichols, Inc. v. State Board of Tax Appeals,** 5 Atl. 2d 473. Commerce Clearing House Court Decisions Requisition No. 214308. Joseph C. Paul of Newark, for prosecutor. David T. Wilentz, Atty. General, (John Solan, Asst. Atty. General, of counsel) for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service, New Jersey volume, page 1303.**

North Carolina.

License tax imposed upon display of samples locally for purpose of securing orders, upheld; trend of recent interpretations of "commerce clause" as applied to taxation noted. In ruling that a state occupation license tax upon the display of samples, goods, etc. in a hotel room or house rented or occupied temporarily, for the purpose of securing orders for the retail sale of such goods, by a person, firm or corporation not a regular retail merchant in the state, was not invalid under the "commerce clause" of the Federal Constitution, the Supreme Court of North Carolina made the following observation: "A casual reading of many of the recent pronouncements of the Supreme Court of the United States apparently indicates a gradual broadening of the Federal power over interstate commerce by liberalizing the definition of what falls within that category, with an accompanying, and even more desirable, broadening of the states' taxing power over matters touching the fringe of the garment of interstate commerce. This latter tendency is indicated by two complementary but distinct developments, the one marked by a narrowing of the compass of what constitutes a direct and undue burden on interstate commerce, and the other by a stricter and more rigid interpretation as to what constitutes discrimination against interstate commerce." *Best & Co., Inc. v. Maxwell, Commissioner of Revenue,** 3 S. E. 2d 292. Harry McMillan, Atty. General, T. W. Bruton and R. H. Wettach, Assts. Atty. General, and Bailey & Lassiter of Raleigh, amicus curiae, for appellant. Manly, Hendren & Womble and W. P. Sandridge of Winston-Salem, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, North Carolina volume, page 7627.

Pennsylvania.

Franchise tax on foreign corporations held constitutional by Pennsylvania Supreme Court. On April 6, 1939, the Court of Common Pleas of Dauphin County found the franchise tax imposed in 1935 upon foreign corporations invalid. This judgment was reversed on September 25, 1939, by the Supreme Court of Pennsylvania, which reached this conclusion: "Viewing the act as a whole, it cannot be declared to violate either the Federal or State Constitutions or to be so inherently arbitrary as to render it unconstitutional."

The appellee Delaware company, organized as both a holding and an operating company, was, however, engaged in Pennsylvania only as a manufacturing and operating company. A large proportion of its property consisted of intangibles used in connection with its holding company business, which it did not carry on in Pennsylvania. The court said that, in determining the franchise tax, the value of its assets represented by capital stock used in connection with its holding company business should have been excluded by the taxing officials. It was primarily because these assets had been included that the lower court reached the opposite conclusion as to the validity

of the tax. The higher court regarded the company's situation as exceptional and said that "it is the duty of the court to construe the act so as to cause the statute's application to be both constitutional and fair." Continuing, the court observed: "For purposes of making the correct calculation of tax due, it will be essential that the separate phases of the business be determined not only with respect to capital stock values, but also with respect to computation of the statutory fractions." The court found no discrimination between domestic and foreign corporations as a result of the imposition of the franchise tax. *Commonwealth v. Columbia Gas & Electric Co.*,* Supreme Court of Pennsylvania, September 25, 1939. Commerce Clearing House Court Decisions Requisition No. 222428. Claude T. Reno, Atty. General, and Frank A. Simon, Deputy Atty. General, for the Commonwealth. George Ross Hull, Snyder Hull, Leiby and Metzger of Harrisburg, William A. Seifert, Reed, Smith, Shaw and McClay of Pittsburgh and J. Smith Christy, Weil, Christy and Weil of Pittsburgh, for defendants.

* The full text of this opinion is printed in **The Corporation Tax Service, Pennsylvania, page 827.**

Bonds which cannot be taxed under Corporate Loans Tax are taxable under both the State and County Personal Property Tax Acts. Bonds of two foreign corporations doing business in Pennsylvania were owned by a resident of Philadelphia. The bonds could not be subjected to the Corporate Loans Tax because the treasurers of the corporations did not reside in Pennsylvania. The question being whether the bonds would thereupon become subject to taxation under the County Personal Property Tax Act and the State Personal Property Tax Act, the Orphans' Court, Philadelphia County, ruled that the bonds were liable to taxation under both acts for state and county purposes. *Estate of Alison*,* Orphans' Court, Philadelphia County, August 11, 1939. Commerce Clearing House Court Decisions Requisition No. 221356. Abraham Wernick, Asst. City Solicitor, Joseph Sharfsin, City Solicitor, John J. Hayes, Irvin Stander and Edward Shippen Morris, Deputy Attorney General, all of Philadelphia, for City of Philadelphia and Commonwealth of Pennsylvania. Howard Burtt of Philadelphia, for estate.

* The full text of this opinion is printed in **The Corporation Tax Service, Pennsylvania, page 2491.**

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 225. *De Aryan v. Akers,* 87 P. 2d 278. (The Corporation Journal, May, 1939, page 400.) Collection of retail sales tax from consumer. **Appeal filed July 26, 1939. Certiorari denied, October 9, 1939.**

MISSISSIPPI. Docket No. 77. *Interstate Natural Gas Co. v. Stone,* 103 F. 2d 544. (The Corporation Journal, October, 1939, page 16.) Franchise tax on foreign pipe line company engaged in interstate commerce. **Appeal filed, May 29, 1939. Certiorari granted, June 5, 1939.**

NEW YORK. Docket No. 38. *Neirbo Company et al. v. Bethlehem Shipbuilding Corporation, Ltd.,* 103 F. 2d 765. (The Corporation Journal, October, 1939, page 10.) Jurisdiction over foreign corporation qualified to do business in the state. **Appeal filed, April 27, 1939. Certiorari granted, May 29, 1939. Argued, October 17 and 18, 1939.**

NEW YORK. Docket No. 45. *McGoldrick, Comptroller of the City of New York v. Felt & Tarrant Mfg. Co.,* 4 N. Y. S. 2d 615; (The Corporation Journal, December, 1938, page 282), affirmed without opinion, New York Court of Appeals, 279 N. Y. 678, 18 N. E. 2d 311. Constitutionality of New York City sales tax as applied to shipments which may be in interstate commerce. **Appeal filed, May 8, 1939. Certiorari granted, June 5, 1939.**

TEXAS. Docket No. 17. *Ford Motor Company v. Edward Clark, Secretary of the State of Texas et al.,* 100 F. 2d 515. (The Corporation Journal, April, 1939, page 376). State annual franchise tax on corporations—basis of tax. **Petition for certiorari filed, March 15, 1939. Petition granted, April 3, 1939. Motion to substitute Tom L. Beauchamp, present Secretary of State, and Gerald Mann, present Attorney General, as parties respondent in place of Edward Clark and William McCraw, respectively, granted, May 1, 1939. Argued, October 16 and 17, 1939.**

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* Data compiled from CCH **U. S. Supreme Court Service, 1939-1940.**

Regulations and Rulings

DISTRICT OF COLUMBIA—Regulations have been issued by the Commissioners of the District of Columbia in connection with the new District of Columbia income tax law. (The regulations are printed in full in the District of Columbia CT (Corporation Tax) Service, page 1401.)

KENTUCKY—The Attorney General of Kentucky has ruled that the income tax paid to the State of Kentucky is not a deductible item from taxable Kentucky income. (Kentucky CT, ¶ 14-547.) The Attorney General has also ruled that income taxes paid to the United States are the only income taxes deductible under the Kentucky income tax law. (Kentucky CT, ¶ 14-548.)

MICHIGAN—The Tax Commission has stated that, under the new intangibles tax law, the first return for calendar year corporations will be due on or before March 1, 1941, while the first return of fiscal year corporations will be due within sixty days after the end of the fiscal year ending in 1940. (Michigan CT, ¶ 24-003.)

MISSOURI—The Attorney General of Missouri has stated as his opinion that personal property on which the United States Government holds a mortgage is taxable to the mortgagor for property tax purposes. (Missouri CT, ¶ 2624.)

NEW MEXICO—The Attorney General, in an opinion to the Commissioner of Revenue, has indicated that the provisions of the New Mexico Income Tax Law for credit for income taxes payable "to another state" is limited to states, territories and possessions of the United States, and does not include foreign states. (New Mexico CT, ¶ 1564.)

NEW YORK—The Attorney General of New York has ruled, in connection with the stock transfer tax, that bonds which entitle the holder to stock under a plan of reorganization are certificates of rights to stock and are taxable when transferred after it becomes legally possible to issue the stock and not before. (New York CT, ¶ 64-040.) The State Department of Taxation and Finance has ruled that where a seller deposits stock certificates in the mail outside the state of New York for a purchaser within the state, the delivery is held to have taken place outside the state and the transfer is not taxable, unless the contract of sale was executed in the state or the stock transferred on the books of the corporation within the state. If the seller deposits the certificates in the mail within the state for a purchaser outside the state the tax will accrue as the delivery is held to have been made within the state. (New York CT, ¶ 64-039.)

OHIO—Taxes owing to the Federal Government, such as the bituminous coal tax, unemployment insurance and the Federal old age benefit tax, are not such taxes and assessments as were contemplated by the legislature in the enactment of Section 5327, G. C., which excludes taxes and assessments in the computation of credits; therefore, such Federal taxes may be deducted from accounts receivable for the purpose of determining the taxable credits for property tax purposes. (Opinion of the Attorney General, Ohio CT, ¶ 25-046.)

Some Important Matters for November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report and Tax due on or before January 1.—Domestic and Foreign Corporations.

NEW YORK—Second installment of Income Tax of Business Corporations due on or before November 15 (or within 30 days after notice, if given later than October 15; payable not later than January 15, in any event).—Domestic and Foreign Business Corporations other than real estate and holding companies.

Supplementary Franchise Tax Return (Form 60 CT) due on or before November 30.—Domestic and Foreign Corporations organized or qualified between May 15 and November 1 of current year.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1938 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

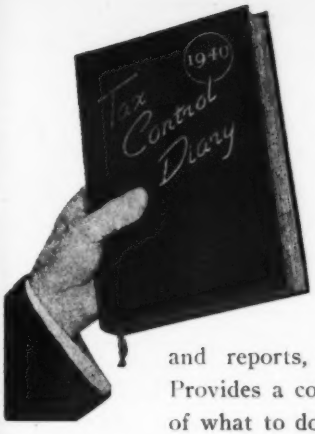
We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—completely up-to-date as regards the most recent amendments.



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